IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2322 of 2005
with
CIVIL APPLICATION NO. 7311 OF 2005

Date of Decision : 17.8.2005

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UNITED INDIA INSURANCE CO. LTD - Appellant(s)

Versus

HAMUKH HIRJIBHAI CHAUHAN THRO'GUARDIAN PUSHPABEN & 2 – Defendant(s)

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Coram :

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K. Rathod, Judge.

Whether approved for Reporting ?

Appearance :

Ms. M.J. Sheltat for Appellant.

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Per : Bhawani Singh, Chief Justice (Oral)

Through this appeal, award of the MACT Jamnagar in Claim Petition No. 883 of 1998 dated January 17, 2005 is challenged.

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Whether Reporters of Local Papers may be allowed to

see the Judgment?

Shortly stated, accident took place on 29.7.1998. Hasmukh Hirji Chauhan was moving on his Luna Moped bearing Registration No. GJ-10-E-7206 at about 10.00 p.m. Towards Three Gates. He was driving his Luna Moped on correct side of the road. Near Grain Market, Bardanwala Road, one tractor bearing Registration No. GJ-10-K-165 driven Opponent No. 1 came from Three Gates Petrol Pump on wrong side, driven rashly and negligently, suddenly turned to Sugar Market. Trolly of the tractor dashed with the Luna Moped, as a result, claimant was thrown of the Moped, suffered grievious head injuries including fracture of skull, brain , hemorrhage etc. He was immediately shifted to the Irwin Group of Hospitals, Jamnagar for treatment. Criminal Case was registered with the Police. He was 40 year old at the time of accident, hale and hearty, only earning member in the family maintaining six members. He suffered fracture of skull, brain hemorrhage, right temporal bone,

frontal bone and other bodily injuries; he was an indoor patient from 29.7.1998 to 12.8.1998 and operation carried out. In the absence of facility of neuro surgeon in the hospital, he was referred to the Hospital of Dr. A.T. Ruparelia Neuro Surgeon where he was treated for some time. He suffered permanent disability with no possibility of restoration. Permanent attendant was engaged by him, he was serving in the Posts & Telegraph Department, Central Government getting Rs.4000.00 per month by way of salary. On account of this accident, he lost permanent income from salary, suffered great pain and shock. Accordingly, he claimed compensation of Rs.18,80,000.00 but confined to Rs.15,00,000.00. Allegation is that the accident took place on account of rash and negligent driving by opponent NO. 1 while opponent No.2 is the owner of the motor vehicle insured with opponent NO.3, therefore, jointly and severally liable to pay the compensation. Opponents NO.1 and 2 filed joint written statement (Exh.34) denying all the contentions raised by the claimant in the claim petition. Allegation of wrong side,

negligent driving, receiving of grievous head injuries with other consequences suffered by the claimant have been denied. They also alleged that the claimant was negligent and caused the accident. Opponent No. 3 filed separate written statement (Exh.28) denying all the contentions raised by the claimant in claim petition including those relating to rash and negligent driving of opponent no.1, injuries suffered by the claimant. Consequently, prayed for dismissal of the claim.

After recording of evidence and hearing the parties, claims tribunal finds driver responsible for the accident, therefore, awarded compensation of Rs.6,72,000.00 carrying interest at the rate of 9 per cent p.a. From the date of the application till deposit, with proportionate costs. Against this award, present appeal has been filed.

From perusal of the memorandum of appeal, the appellant has assailed finding of the claims tribunal as to negligence and quantum of compensation. In absence of proper permission under section 170 of the Motor Vehicles Act, 1988, Insurance Company cannot

assail the award on negligence and quantum of compensation. Its defenses are limited to those under section 149 (2) of the Motor Vehicles Act. Shri M.J. Shelat, learned counsel for the appellant submits that the permission under section 170 of the Motor Vehicles Act was obtained. For examining this question, application under section 170 of the Motor Vehicles Act, 1988 and the order passed by the Claims Tribunal dated January 7, 2004 are perused. Before deciding the question, let provisions of section 170 of the Motor Vehicles Act, 1988 be quoted :

“170. Impleading insurer in certain cases.- Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be imp leaded as a party to the proceeding and the insurer so imp leaded shall thereupon have, without prejudice to the provisions contained in sub section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.”

It is crystal clear from section 170 that the Insurance Company can be imp leaded during the course of trial before the Claims Tribunal. This power can be exercised by the Claims Tribunal after being satisfied that there is collusion between the person making the claim and the person against whom claim is made or when person against whom claim is made has failed to contest the claim. Claims Tribunal has to pass reasoned order in writing. The applicant submits in the application under section 170 of the Motor Vehicles Act, 1988 that "the driver and owner, it appears, have not appeared and, therefore, they have failed to contest claim in the matter; that there is a collusion between the claimants and the driver and the owner who are parties to this proceedings." With these submissions, permission under section 170 of the Motor Vehicles Act, 1988 is sought. On this application, 'no objection' is recorded from the side of the claimant.Ultimately, on 7.1.2004, claims tribunal grants permission after perusal of the application, claim petition as well as

the documentary evidence, taking into consideration apprehension of the insurance company that there is collusion between the applicant, driver and owner of the vehicle. Factually, reasons recorded by the claims tribunal for allowing this application do not exist. Therefore, it is mechanical exercise of power, otherwise, it could not have been exercised because owner and the driver had contested the claim. They have filed joint written statement through independent lawyer. Claimant has appeared in witness box, subjected to cross examination by the owner and driver of the vehicle as well as by the Insurance Company, claimant was examined on 16.9.03, driver and owner cross examined on 3.1.2002 and Insurance Company cross examined on 7.1.2004 and permission is granted on 7.1.2004. Therefore, by no stretch of imagination, it can be held that there is collusion between the claimant owner and driver of the vehicle. When these ingredients of section 170 of the Motor Vehicles Act 1988 are missing, permission granted is illegal and "no objection" by the counsel for the claimant cannot legalise the order which is

illegal.

Having come to the aforesaid conclusion, Insurance Company cannot contest the claim as to the negligence and quantum of compensation (See : National Insurance Co. Ltd. v. Nicolletta Rohtagi and others, 2002 ACJ 1950 and United India Insurance Co. Ltd. v. Veena Kumari Bakshi and others, 2005 ACJ 1258].

Accordingly, appeal is dismissed. Amount, if any, deposited by the appellant in the Registry of this Court under section 173 of the Motor Vehicles Act, 1988 be transmissed to the Claims Tribunal.

No order on Civil Application No. 7311 of 2005. Civil Application is disposed of.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K. RATHOD]
JUDGE

Vyas